

LIBRARY
SUPREME COURT, U. S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1953

No. 269

**MARION S. FELTER, on behalf of himself and others
similarly situated, PETITIONER,**

vs.

SOUTHERN PACIFIC COMPANY, ET AL.

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**PETITION FOR CERTIORARI FILED AUGUST 11, 1953
CERTIORARI GRANTED OCTOBER 13, 1953**

No. 15644

United States
Court of Appeals
for the Ninth Circuit

MARION S. FELTER, on behalf of himself and
others similarly situated, Appellant,

vs.

SOUTHERN PACIFIC COMPANY, a Corporation,
BROTHERHOOD OF RAILROAD
TRAINMEN, a voluntary association;
J. J. CORCORAN, as General Chairman, General
Committee, Brotherhood of Railroad
Trainmen; J. E. TEAGUE, as Secretary, General
Committee, Brotherhood of Railroad
Trainmen, Appellees.

Transcript of Record

Appeal from the United States District Court for the
Northern District of California,
Southern Division

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Affidavit of J. W. Beardsley Dated April 19, 1957	23
Affidavit of J. W. Beardsley Dated April 19, 1957, In Opposition to Application for Temporary Restraining Order and/or Preliminary Injunction	33
Affidavit of M. G. Breuner Dated April 30, 1957	47
Exhibit A—Letter, April 26, 1957, M. G. Breuner to L. R. Smith, Supt.....	53
Affidavit of H. F. Brown Dated April 30, 1957	54
Copies of Letters Sent to the Southern Pacific Co. and to the Brotherhood of Trainmen by Jack E. H. Gray and Frank J. Sebastian	56-58
Affidavit of Clifton Hildebrand Dated April 29, 1957	38
Copies of Statements by Certain Persons Repudiating Alleged Class Action and Expressing Desire to Remain in Brotherhood of Railroad Trainmen.....	39-45

ii.

Affidavit of Richard B. McDonough Dated April 12, 1957, in Support of Application for Temporary Restraining Order and/or Preliminary Injunction	10
Affidavit of Richard B. McDonough Dated April 16, 1957, in Support of Temporary Restraining Order and/or Preliminary Injunction	17
Exhibit A—Letter, Mar. 30, 1957, Marion S. Felter to J. W. Beardsley, Set Out at Pages	23-24
Exhibit B—Forms of Wage Assignment Revocation, Set Out at Pages	79-80
Exhibit C — Letter Dated Mar. 30, 1957, M. G. Breuner to L. R. Smith, Supt.	20
Exhibit D—Letter Dated Apr. 1, 1957, L. R. Smith to M. G. Breuner	21
Exhibit E—List Entitled "Individuals Similarly Situated to Plaintiff"	22
Answer of Brotherhood of Railroad Trainmen, J. J. Coreoran and J. E. Teague to Complaint	35
Answer of Southern Pacific Company to Complaint	62
Appeal:	
Certificates of Clerk to Transcript of Record on	70, 80
Notice of	70
Statement of Points on (USCA)	81

iii.

Certificates of Clerk to Transcript of Record	70, 80
Complaint	3
Motion of Brotherhood of Railroad Trainmen, J. J. Coreoran and J. E. Teague for Sum- mary Judgment or to Dismiss.....	46
Motion of Plaintiff for Summary Judgment...	59
Names and Addresses of Attorneys.....	1
Notice of Appeal.....	70
Order of the Court Dated May 24, 1957 Dis- solving Temporary Restraining Order and Dismissing Action	65
Order to Show Cause and Temporary Restrain- ing Order	15
Statement of Points to Be Relied Upon (USCA)	81
Stipulation and Order Dated Aug. 22, 1957, Correcting and Supplementing Record and Agreement Incorporated Therein.....	72
Agreement Dated June 23, 1955, by and Be- tween Southern Pacific Company and the Brotherhood of Railroad Trainmen.....	74

	Original	Print
Proceedings in the U.S.C.A. for the Ninth Circuit	84	84
Minute entry of argument and submission (omitted in printing)	84	84
Minute entry of order directing filing of opinion and filing and recording of judgment	85	84
Opinion, Healy, J.	86	85
Judgment	89	87
Clerk's certificate (omitted in printing)	90	88
Order allowing certiorari	91	88

NAMES AND ADDRESSES OF COUNSEL

CARROLL, DAVIS & BURDICK,

Balfour Building,
San Francisco 4, California,

Counsel for Appellant.

BURTON MASON,

W. A. GREGORY,

H. S. LENTZ,

65 Market Street,
San Francisco 5, California,

HILDEBRAND, BILLS and McLEOD,

1212 Broadway,
Oakland 12, California,

Counsel for Appellees.

**District Court of the United States, Northern
District of California, Southern Division**

No. 36348

**MARION S. FELTER, on behalf of himself and
others similarly situated, Plaintiff,**

vs.

**SOUTHERN PACIFIC COMPANY, a corpora-
ration; BROTHERHOOD OF RAILROAD
TRAINMEN, a voluntary association; J. J.
CORCORAN, as General Chairman, General
Committee, Brotherhood of Railroad Train-
men; J. E. TEAGUE, as Secretary, General
Committee, Brotherhood of Railroad Train-
men, Defendants.**

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

Comes now the plaintiff, Marion S. Felter, on be-
half of himself and others similarly situated, and
alleges that:

I.

Plaintiff is a resident of Ashland, Oregon, and
brings this action on behalf of himself and others
similarly situated as a class action under Rule 23
of the Federal Rules of Civil Procedure.

II.

Plaintiff and others similarly situated now are
and have at all times since October 24, 1955, been

employed as conductors or in other operating classifications by the Southern Pacific Company, a corporation.

III.

Defendant Southern Pacific Company is a corporation duly organized and existing under the laws of the State of Delaware, and duly authorized to and doing business in the States of California, Oregon, Arizona, Texas, New Mexico, Nevada and Utah, and as a common carrier by rail in interstate commerce. Defendant Southern Pacific Company, hereinafter referred to as Carrier, is a carrier within the definition of Section 1 of the Railway Labor Act, as amended, Title 45 U.S.C.A., Section 151 et seq. The Carrier has a principal place of doing business in the City and County of San Francisco, State of California.

IV.

Defendant Brotherhood of Railroad Trainmen, hereinafter referred to as the Brotherhood, is a voluntary association and a labor organization within the meaning of the Railway Labor Act, as amended, Title 45 U.S.C.A., Section 151 et seq., and has had at all times herein mentioned a collective bargaining agreement with the Carrier. The defendant Brotherhood, acting through its designated agent and component, the defendant General Committee, Brotherhood of Railroad Trainmen, maintains its headquarters and is a resident of the City and County of San Francisco, State of California.

V.

Defendant J. J. Corcoran, a resident of the State of California, is the General Chairman of the General Committee, Brotherhood of Railroad Trainmen, a defendant herein, and is sued in his representative capacity for said organization and its members.

VI.

Defendant J. E. Teague, a resident of the State of California, is Secretary of the General Committee, Brotherhood of Railroad Trainmen, a defendant herein, and is sued in his representative capacity for said organization and its members.

VII.

This Court has jurisdiction over the subject matter of this action and the parties hereto, because this is a suit arising under the law of the United States regulating commerce, the Railway Labor Act, Title 45 U.S.C.A., Section 151 et seq., and particularly Title 1, Section 11 of said Act, as hereinafter more particularly appears. The amount involved in this controversy exceeds the sum of \$3,000, exclusive of interest and costs. The plaintiff is a resident of the State of Oregon and the defendant Southern Pacific Company is a Delaware corporation doing business in the State of California, and the defendant Brotherhood is a voluntary association doing business in the State of California.

VIII.

This action involves and requires a determination of the validity of a collective bargaining agreement

negotiated under the provisions of the Railway Labor Act between the Carrier and the Brotherhood, as interpreted and applied by the parties thereto. This suit, therefore, arises under a law of the United States regulating commerce, the Railway Labor Act.

IX.

The plaintiff and others similarly situated on or some time before February 1, 1956, executed an assignment of wages which provided that the Carrier should deduct from the wages or salaries due plaintiff and others similarly situated such amounts as would be required to pay the dues, assessments, initiation fees and insurance premiums owed by them to the Brotherhood. At the time said assignments were executed, plaintiffs and others similarly situated were members of the Brotherhood. Said assignments were made pursuant to a collective bargaining agreement between the Carrier and the Brotherhood, which provided that the Carrier would deduct sums for periodic dues, initiation fees, assessments and insurance premiums payable to the Brotherhood by the members thereof.

X.

The agreement hereinabove referred to further provided that the members of the Brotherhood who were employees of the Carrier and who had signed such authorizations for wage assignments could at any time after the expiration of one year from the date of the execution of such assignment revoke the authorization in writing; the Brotherhood, un-

der the terms of said agreement, being required to provide the Carrier with the names of those employee members who had executed such assignments, said names to be produced monthly.

XI.

On or before March 1, 1956, the plaintiff and others similarly situated terminated their membership in the Brotherhood. On or before March 1, 1956, the plaintiff and others similarly situated sent a written revocation of their assignment of wages for the payment of dues to the Brotherhood to the defendant Carrier and to the defendant Brotherhood.

XII.

The defendant Carrier has advised plaintiff and others similarly situated that it will not honor such written revocations, due receipt of same having been acknowledged, but that the defendant Carrier would continue to deduct from the wages of plaintiff and others similarly situated and pay to the defendant Brotherhood such sums as the Brotherhood indicated would be required to pay periodic dues, initiation fees and assessments owed by and charged against plaintiff and others similarly situated, even though they were no longer members of the Brotherhood.

XIII.

The defendant Brotherhood has advised the plaintiff and others similarly situated that it will not honor their notices of termination of membership in the Brotherhood, nor forward to the Car-

rier the revocation of assignments received by it from the plaintiff and others similarly situated. The Brotherhood has announced that it will continue to collect sums from the wages due plaintiff and others similarly situated withheld by the Carrier for and on account of dues, initiation fees and assessments claimed by the Brotherhood.

XIV.

The defendant Carrier has announced that it will continue to withhold from the wages due plaintiff and others similarly situated certain sums and pay them to the defendant Brotherhood each month, and the defendant Brotherhood will claim such sums and receive such sums each month. Therefore, a multiplicity of suits will arise in this controversy unless the Carrier is enjoined from deducting such sums from the wages due plaintiff and others similarly situated and pay same to the defendant Brotherhood. A multiplicity of actions will arise out of this controversy unless the Brotherhood is restrained and enjoined from claiming and receiving such sums from the Carrier each month.

XV.

The plaintiff and others similarly situated do not have adequate remedy at law by reason of the refusal of the defendants Carrier and Brotherhood to recognize the plaintiff's and others similarly situated withdrawal from the Brotherhood as their representative for collective bargaining purposes and continued refusal to honor the revocation of

the assignment of wages to the Brotherhood, of which they are no longer members.

Wherefore, plaintiff and others similarly situated pray that this Court:

(1) Make a determination of the rights of plaintiff and others similarly situated to withdraw from the Brotherhood and revoke the assignment of wages in favor of the Brotherhood, as provided in the Railway Labor Act, Title 45 U.S.C.A., Section 151 et seq., and the rights and responsibilities of the defendant Brotherhood under the collective bargaining agreement hereinabove referred to, which was negotiated by the Brotherhood as the collective bargaining agent of plaintiff and others similarly situated.

(2) Issue an order to show cause directed to the Carrier requiring it to appear and show cause why it should not be permanently enjoined from deducting a portion of plaintiff's and others similarly situated wages and paying same to the Brotherhood, and that the Court issue an order to show cause directed to the Brotherhood requiring it to appear and show cause why it should not be enjoined from claiming and receiving any portion of the wages due plaintiff and others similarly situated.

(3) Pending the hearing on the order to show cause, the Court issue a temporary restraining order directed to the Carrier and the Brotherhood in the manner set forth in Paragraph (2) above.

(4) Following the hearing on the order to show

cause, the Court issue a temporary injunction against the Brotherhood and the Carrier in the manner set forth in Paragraph (2) above, pending the determination of the litigation of this action.

(5) Following the litigation of this action, the Court issue its permanent injunction against the Brotherhood and the Carrier in the manner set forth in Paragraph (2) above.

(6) Such other and further relief as the Court may deem proper in the premises.

CARROLL, DAVIS & BURDICK,
/s/ By RICHARD B. McDONOUGH,
Attorneys for Plaintiff.

Duly Verified.

[Endorsed]: Filed April 12, 1957.

Title of District Court and Cause.]

AFFIDAVIT OF RICHARD B. McDONOUGH
IN SUPPORT OF APPLICATION FOR
TEMPORARY RESTRAINING ORDER
AND/OR PRELIMINARY INJUNCTION

State of California

City and County of San Francisco—ss.

Richard B. McDonough, being first duly sworn, deposes and says that:

He is an attorney at law and one of the attorneys for the plaintiff in the above entitled action; said plaintiff is a resident of the State of Oregon and

resides out of the City and County of San Francisco, where said attorney has his office; affiant is apprised of all the circumstances and facts of plaintiff's suit and makes this affidavit on his behalf.

At all times involved in this action the plaintiff has been employed as a conductor by the Southern Pacific Company, a corporation. On or before February 1, 1956, while so employed as a conductor, the plaintiff executed an assignment of wages due him from the defendant Southern Pacific Company each month in favor of the defendant Brotherhood of Railroad Trainmen, to the extent that said defendant Brotherhood would claim amounts due to it by plaintiff for dues, assessments and insurance premiums arising in connection with plaintiff's membership in the Brotherhood. Said assignment was made in the form and in the manner provided in a collective bargaining agreement negotiated by the defendant Southern Pacific Company and the Brotherhood of Railroad Trainmen, a voluntary association, acting as collective bargaining agent for the plaintiff on or about August 8, 1955.

Pursuant to the provisions of Section 11 of the Railway Labor Act, Title 45 U.S.C.A., Section 150 et seq., and pursuant to the provisions of said collective bargaining agreement, on March 1, 1957, the plaintiff executed a revocation of the assignment of wages hereinabove described, and delivered said revocation to the defendant Southern Pacific Company and to the defendant Brotherhood of Railroad Trainmen.

The plaintiff was advised by defendant Southern Pacific Company that said revocation would not be recognized by the Company and that it would continue to deduct from the plaintiff's wages each month such sums as would be claimed by the defendant Brotherhood of Railroad Trainmen for the payment of assessments and dues arising out of plaintiff's membership in the Brotherhood. The plaintiff, prior to serving such revocation of assignment upon the defendant Southern Pacific Company, terminated his membership with the afore-said Brotherhood of Railroad Trainmen, and further served upon that organization a notice of revocation of his assignment of wages in favor of the Brotherhood of Railroad Trainmen. Defendant Brotherhood of Railroad Trainmen refuses to recognize the plaintiff's termination of membership in said Brotherhood and further refuses to honor the revocation of the assignment of wages, and continues to claim and will receive all sums which are withheld from the plaintiff's wages and paid to him by the Southern Pacific Company.

Plaintiff brings this action on behalf of himself and other employees similarly situated as conductors or operating personnel employed by the defendant Southern Pacific Company, who, along with plaintiff, have terminated their membership in the Brotherhood of Railroad Trainmen and have served revocation of assignment of wages on the defendant Brotherhood of Railroad Trainmen and upon the defendant Southern Pacific Company.

The defendant Brotherhood of Railroad Train-

men refuses to recognize the termination of membership and still professes to act as the collective bargaining agent of plaintiff and others similarly situated. The Brotherhood of Railroad Trainmen refuses to recognize the revocation of assignment and continues to claim sums withheld from the plaintiff's wages and the wages of others similarly situated by the Southern Pacific Company. The Southern Pacific Company refuses to recognize the termination of memberships by plaintiff and others similarly situated, and the Southern Pacific Company continues to recognize the Brotherhood of Railroad Trainmen as the collective bargaining agent for this plaintiff and others similarly situated. The Southern Pacific Company has withheld sums from the wages due plaintiff and paid same to the defendant Brotherhood of Railroad Trainmen, and has withheld sums from the wages due others similarly situated and paid same to the defendant Brotherhood of Railroad Trainmen.

The defendants will continue in such conduct above described unless ordered to refrain from doing so by this court. A multiplicity of suits will arise as a result of the continued refusal of the defendants to recognize the plaintiff's, and others similarly situated, termination of membership in the Brotherhood of Railroad Trainmen and revocation of assignment of wages in favor of the Brotherhood of Railroad Trainmen.

The acts of the defendants are in violation of Section 11 of the Railway Labor Act, and if said actions are in pursuance of any collective bargain-

ing agreement between the defendants, such collective bargaining agreement is likewise violative of Section 11 of the Railway Labor Act.

That the other persons similarly situated to plaintiff herein number in excess of fifty; that as to each of said persons similarly situated, the conduct of defendants as above described has been identical.

Wherefore, plaintiff prays for the equitable relief of this Court, pending a declaration of the respective rights of the parties under Section 11 of the Railway Labor Act, and/or any collective bargaining agreement involved herein.

/s/ RICHARD B. McDONOUGH.

Subscribed and sworn to before me this 12th day of April, 1957.

[Seal] GEORGETTE LINDEY,
Notary Public in and for the City and County of San Francisco, State of California. My commission expires April 30, 1960.

Memorandum of Points and Authorities

Section 11, Railway Labor Act, 45 U.S.C.A., Sec. 151.

Salyant vs. Louisville & N. R. Co., 83 Fed. Supp. 391.

Smith vs. Baltimore & Ohio R. et al., 144 Fed. Supp. 869.

Rules of Civil Procedure, Rule 65.

[Endorsed]: Filed April 12, 1957.

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER

Upon reading and filing the verified complaint of plaintiff in this action and the affidavit of Richard B. McDonough, and considering the Points and Authorities, and it appearing to the satisfaction of the Court therefrom that this is a proper case for granting a temporary restraining order, and unless the temporary restraining order prayed for in said complaint be granted, great injury will result to the plaintiff and others similarly situated before the matter can be heard on notice,

Now, Therefore, It Is Hereby Ordered that the defendants above named be and appear before the Master Calendar thereof, at the hour of 11 o'clock a.m. on the 18th day of April, 1957, then and there to show cause, if any they have, why they and their agents, servants, employees and attorneys should not be enjoined and restrained during the pendency of this action from the defendant Southern Pacific Company, a corporation, deducting from the wages due plaintiff and others similarly situated sums and paying same to the defendant Brotherhood of Railroad Trainmen, and continuing to recognize the Brotherhood of Railroad Trainmen as the collective bargaining agent for the plaintiff and others similarly situated; and that the defendant Brotherhood of Railroad Trainmen be restrained from claiming or receiving any sums deducted from the wages of the plaintiff or others

similarly situated by the defendant Southern Pacific Company, and professing to act as the collective bargaining agent for plaintiff and others similarly situated.

It Is Further Ordered that pending the hearing of this order to show cause, the defendants, their agents, servants, employees and attorneys be, and they are hereby enjoined and restrained from, in the case of the defendant Southern Pacific Company, withholding any sums from the wages due said plaintiff and others similarly situated and paying same to the defendant Brotherhood of Railroad Trainmen, and recognizing the Brotherhood of Railroad Trainmen as the collective bargaining agent of said plaintiff and others similarly situated; and, in the case of defendant Brotherhood of Railroad Trainmen, from claiming or receiving any sums deducted from the wages due plaintiff and others similarly situated from defendant Southern Pacific Company and professing to act as the collective bargaining agent of said plaintiff and others similarly situated.

It Is Further Ordered that a copy of the complaint, a copy of the affidavit of Richard B. McDonough and the memorandum of points and authorities, if they have not already been served, be served upon the defendants no later than the 13th day of April, 1957.

Dated April 12, 1957.

/s/ EDWARD P. MURPHY,
Judge.

[Endorsed]: Filed April 12, 1957.

[Title of District Court and Cause.]

**AFFIDAVIT IN SUPPORT OF TEMPORARY
RESTRAINING ORDER AND/OR PRE-
LIMINARY INJUNCTION**

State of California

City and County of San Francisco—ss.

Richard B. McDonough, being first duly sworn,
deposes and says that:

He is one of the attorneys for Marion S. Felter,
plaintiff in the above entitled action. Said plaintiff
is a resident of Ashland, Oregon, and resides out-
side the City and County of San Francisco, where
affiant maintains his offices, and, therefore, affiant
makes this affidavit on behalf of said plaintiff.

On or about March 30, 1957, plaintiff submitted
a letter of withdrawal from the Brotherhood of
Railroad Trainmen and a revocation of the wage
assignment made prior to March 1, 1956, in favor
of the Brotherhood of Railroad Trainmen. Attached
hereto and marked Exhibit A is a copy of said
letter.

On or before March 30, 1957, plaintiff forwarded
to the Southern Pacific Company a revocation of
the wage assignment authorization which he had
previously made in favor of the Brotherhood of
Railroad Trainmen on or before March 1, 1956.
Attached hereto and marked Exhibit B is a copy
of the said revocation forwarded to the Southern
Pacific Company.

On or before March 30, 1957, M. G. Breuner,

Local Chairman of the Order of Railroad Conductors, on behalf of plaintiff and others similarly situated forwarded to the defendant Southern Pacific Company, attention Mr. L. R. Smith, Superintendent, Portland Division, a revocation of the assignment of wages executed by plaintiff and others similarly situated on or before March 1, 1956, in favor of the Brotherhood of Railroad Trainmen. Said letter sets forth a portion of the people who are similarly situated to plaintiff in the controversy which gives rise to this lawsuit. A copy of said letter is attached hereto and marked Exhibit C.

On or about April 1, 1957, the defendant Southern Pacific Company, by L. R. Smith, Superintendent, forwarded a certified letter to Mr. M. G. Breuner, Local Chairman of the Order of Railroad Conductors, acknowledging receipt of the letter described in the above paragraph. Attached hereto and marked Exhibit D is a copy of said letter from L. R. Smith to M. G. Breuner.

Attached hereto and marked Exhibit E is a list of a portion of the individuals who are similarly situated to plaintiff in this controversy, in that said individuals have at some time prior to March 1, 1956, executed wage assignment authorizations in favor of the defendant Brotherhood of Railroad Trainmen for wages due them from the Southern Pacific Company, said assignments to cover monthly union dues, fees, assessments and initiation fees; and said individuals on or before March 30, 1957, terminated their membership in the defendant

Brotherhood of Railroad Trainmen and forwarded revocations of the wage assignments above referred to to the defendant Southern Pacific Company and to the defendant Brotherhood of Railroad Trainmen. As in the case of plaintiff Marion S. Felter, the defendant Southern Pacific Company refuses to recognize said revocations of wage assignments and, as in the case of plaintiff, the defendant Brotherhood of Railroad Trainmen refuses to recognize said individuals' termination of membership in the Brotherhood and refuses to recognize the revocations of the wage assignments in favor of the Brotherhood. As in the case of plaintiff, the defendant Brotherhood of Railroad Trainmen continues to profess to be the collective bargaining agent of such individuals.

/s/ RICHARD B. McDONOUGH.

Subscribed and sworn to before me this 16th day of April, 1957.

[Seal] GEORGETTE LINDEY,
Notary Public in and for the City and County of San Francisco, State of California. My commission expires April 30, 1960.

[Note: Exhibit A, Letter of March 30, 1957, Marion S. Felter to J. W. Beardsley, is set out at pages 23-24 of this printed record. Exhibit B, Wage Assignment Revocation, is set out at pages 79-80.]

EXHIBIT "C"**Order of Railroad Conductors****Division Number 526****Southern Pacific Lines****Eugene, Oregon****March 30, 1957**

**Mr. L. R. Smith, Superintendent
Portland Division—Southern Pacific Company
Portland, Oregon**

Dear Sir:

Herewith properly signed Dues Deduction Revocation forms. These forms have been signed by employees working in the class and craft of conductors-brakemen, who had previously signed Wage Deduction Authorizations for the dues to be paid to the Brotherhood of Railroad Trainmen.

While this Revocation of Dues Deduction form has also been forwarded to the proper Treasurer of the Brotherhood of Railroad Trainmen, it is our understanding that he is declining to submit same to you for the purpose of it being made effective.

So that the employee whose signature appears on the enclosed forms may, under the circumstances, be sure that the Carrier has received such revocation, he has personally requested that I transmit these forms to you.

Will you kindly place in effect the Revocation of the Dues Deduction for the men herewith listed, for whom proper cards are enclosed.

The men involved are:

H. C. Barker, H. E. Counts, E. H. Stankey, A.

E. Ebbensen, C. N. Speight, L. A. West, H. R. Robinson, H. E. Harmon, J. G. DePaepe, N. C. Cannon, Marion S. Feltner, J. D. Dunn, Charles Vincent.

Respectfully yours,

M. G. BREUNER.

cc: H. F. Brown

G. A. Falk

G. L. Johnson

EXHIBIT "D"

Southern Pacific Company

Union Station

Portland 9, Oregon

April 1, 1957

In reply please refer to 013-234.

Certified U. S. Mail

Return Receipt Requested

Mr. M. G. Breuner

Local Chairman ORC&B

100. Gilham Road, Eugene, Oregon

Dear Sir:

Your letter of March 30, 1957 without file reading:

[See Exhibit "C" set out at pages 20-21.]

This matter is being directed to the attention of the appropriate officer of the Brotherhood of Railroad Trainmen for handling in accordance with the Agreement.

Yours truly,

/s/ L. R. SMITH.

EXHIBIT "E"

Individuals Similarly Situated to Plaintiff

James E. Smith, Eugene, Oregon, Glenn H. Ross, Eugene Oregon, Clarence W. Everts, Sr., Eugene, Oregon, Harold C. Barker, Eugene, Oregon; Julius G. DePaepe, Springfield, Oregon, Charles N. Speight, Springfield, Oregon, William V. Ficek, Eugene, Oregon, Harvey E. Harmon, Springfield, Oregon, James D. Dunn, Eugene, Oregon, James L. Graham, Eugene, Oregon, Fred A. Copeland, Eugene, Oregon, Jacob L. Ploub, Jr., Eugene, Oregon, Willis E. Haight, Eugene, Oregon, Hawley E. Counts, Roseburg, Oregon, Lawrence A. West, Roseburg, Oregon, Robert V. Miller, Roseburg, Oregon, Robert E. Biddle, Ashland, Oregon, Norman C. Cannon, Ashland, Oregon, Donald T. Skundrick, Ashland, Oregon, Walter M. Skundrick, Ashland, Oregon, Thomas A. Henderson, Springfield, Oregon, Edward H. Stankey, Eugene, Oregon, A. E. Ebbesen, Eugene Oregon, William M. Jones, Eugene, Oregon.

[Endorsed]: Filed April 16, 1957.

[Title of District Court and Cause.]

AFFIDAVIT OF J. W. BEARDSLEY

State of California

City and County of San Francisco—ss.

J. W. Beardsley, being first duly sworn, deposes and says that:

I am the Secretary and Treasurer of Lodge No. 314 at Eugene, Oregon, Brotherhood of Railroad Trainmen, and have been the one who has dealt with the Plaintiff, Marion S. Felter, in connection with the dues deduction matters affecting the Organization.

First word which I received from Mr. Felter in this connection was a letter which read as follows:

"321 Alta

Ashland, Oregon

March 30, 1957

Mr. J. W. Beardsley

2334 Friendly, Eugene, Oregon

Dear Sir and Brother:

With some feeling of regret I wish to advise that I have decided to withdraw from the BofRT and join the ORC&B. I have no dissatisfaction with Local 314 or any of its members or officers but for various reasons have decided to become a member of the ORC&B.

Effective April 1, 1957, I hereby revoke the Wage Assignment Authorization now in effect assigning to the Brotherhood of Railroad Trainmen that part

of my wages necessary to pay my monthly dues, assessments, initiation fees and insurance premiums, now being withheld pursuant to the Deduction Agreement between the Organization and the Company. I hereby cancel said authorization to deduct any such monthly dues. I have sent an attachment "B" card to the company.

I trust this will suffice to take care of the matter and if there should be any further question please advise.

Fraternally yours,

(Sgd.) Marion S. Felter."

This letter was received by me on April 2, 1957, and was postmarked March 31, 1957, 11:30 AM, Ashland, Oregon, which is a distance of approximately 214 miles by rail from Eugene, Oregon, where I am located. There was no revocation form attached to this letter of March 30, 1957, and I had received no previous advice from anyone of any action taken by Mr. Felter to revoke his assignment of wages. In the meantime and on March 30, 1957, the Secretary and Treasurer of the Order of Railway Conductors and Brakeman, gave me a wage assignment revocation in the prescribed form, but one that was printed by the Order of Railway Conductors and Brakemen and not "reproduced and furnished as necessary" by the Brotherhood of Railroad Trainmen.

Following the receipt of this letter of March 30, 1957, from Mr. Felter, having in mind our agree-

ment with the railroad and my instructions from the Brotherhood of Railroad Trainmen pursuant to this agreement that I had "full responsibility for the procurement and execution of the forms by employes and for the delivery of such forms to the Company", I wrote Mr. Felter as follows:

"April 2, 1957

Marion S. Felter
321 Alta, Ashland, Oregon

Dear Sir and Brother:

This is in reply to your letter of March 30, which arrived yesterday afternoon.

General Chairman Coreoran has instructed all secretary-treasurers that the A-2 Wage Assignment Revocation cards printed by the ORC&B are not acceptable. The only way that you can be released from Wage Assignment Authorization is by signing a regulation A-2 card furnished by me and forwarded by me to the Company. I am enclosing a card for you to complete and return to me.

Since I mail my Wage Assignment papers to the Company tomorrow morning, your card will have to be sent in as effective May 1.

We would be sorry to lose you as a member of the BRT and hope that you may reconsider.

Fraternally yours,

(Sgd.) J. W. Beardsley,
Secretary-treasurer #314."

The card which I sent to Mr. Felter in my letter of April 2, 1957, was never filled out or completed

and returned to me as I requested him to do. As soon as it would have been filled out and returned to me in accordance with my instructions from the Brotherhood of Railroad Trainmen, and in accordance with our practice in handling these lodge matters under the agreement, I would have promptly processed the card giving the revocation effect in accordance with Section 3 of the Dues Deduction Agreement, and in accordance with the time schedule worked out with the Company thereunder.

So far as any others are concerned similarly situated with Mr. Felter, I have plenty of revocation cards available in the form prescribed by our agreement, and was at all times ready and willing as Secretary and Treasurer of the Brotherhood of Railroad Trainmen to furnish these forms on request and "assume full responsibility for the procurement and execution of the forms by employees and for the delivery of such forms to the Company".

Since I have the responsibility as the representative of the organization for the handling of these matters, I did not feel that it would be proper to allow some representative of some other organization, or other outsider, to handle the matters, or for them to be handled, differently than that spelled out and set forth in our Dues Deduction Agreement with the railroad. I then wrote to J. J. Corcoran, General Chairman, Brotherhood of Railroad Trainmen, as follows:

"April 3, 1957.

J. J. Corcoran

General Chairman BRT

939 Pacific Building

San Francisco 3, California

Dear Sir and Brother:

Enclosed is copy of a letter than I have today received from Mr. L. R. Smith. Attached to his letter were 13 of the A-2 cards that had been printed by the ORC&B.

My check-off list had already been mailed when I received Mr. Smith's letter. I included with my list regulation A-2 cards for the following: Harold C. Barker, Norman C. Cannon, Julius G. DePaepe, James D. Dunn, Thomas N. Haldorson, and James E. Smith.

A regulation A-2 card for Hawley Counts arrived after my check-off list had been mailed, and will be sent in with next month's list together with any other regulation A-2 cards received before May 3. ORC&B local secretary-treasurer, George Johnson, agrees with me that any BRT A-2 cards which arrive since my April list has been mailed, shall be held until next month.

Since Mr. Smith apparently assumes that we would accept the A-2 cards which he returned to me (these cards were sent to him by Mr. Breuner, I believe), Brother Borgaard and I thought that you might prefer to answer Mr. Smith's letter, or might want to advise me as to how it should be answered.

Of the thirteen listed by Mr. Smith, 6 have not requested regulation cards from me, 2 have requested them, but have not returned them, and 5 have requested and returned them.

Fraternally yours,

(Sgd.) J. W. Beardsley

Secretary-treasurer #314"

Thereupon I received following letter from L. R. Smith, Superintendent, Southern Pacific Company:

"April 1, 1957

In reply please refer to 013-234

Certified U. S. Mail

Return Receipt Requested

Mr. J. W. Beardsley, Treasurer

McKenzie Lodge #314, BofRT

2334 Friendly Street, Eugene, Oregon

Dear Sir:

I am enclosing herewith Wage Assignment Revocations which have been presented in favor of the following:

Harold C. Barker

Harvey E. Harmon

Norman C. Cannon

Harlan R. Robinson

Hawley E. Counts

Charles N. Speight

Julius G. DePaepe

E. H. Stankey

James D. Dunn

Charles Vincent

Anders E. Ebbesen

Lawrence A. West

Marion S. Felter

The attached Wage Assignment Revocations are being forwarded to you so that they may be handled in accordance with provisions of the Agreement signed at San Francisco, California, June 23,

1956, identified as TRN 1-685, as you will undoubtedly wish to show same on the list to be furnished on or before the 5th day of April, 1957 as the names of the employes from whose wages no further deductions are to be made. Please advise.

Yours truly,

(Sgd.) L. R. Smith."

I replied as follows under date of April 8, 1957:

"Mr. L. R. Smith

Superintendent—Portland Division

Southern Pacific Company

Portland, Oregon

Dear Sir:

This will acknowledge receipt of your letter of April 1, 1957, reading:

"I am enclosing herewith Wage Assignment Revocations which have been presented in favor of the following:

Harold Barker

Harvey E. Harmon

Norman C. Cannon

Harlan R. Robinson

Hawley E. Counts

Charles N. Speight

Julius G. DePaepe

E. H. Stankey

James D. Duan

Charles Vincent

Anders E. Ebbesen

Lawrence A. West

Marion S. Felter

"The attached Wage Assignment Revocations are being forwarded to you so that they may be handled in accordance with provisions of the Agreement signed at San Francisco, California, June 23, 1956, identified as TRN 1-685, as you will un-

doubtedly wish to show same on the list to be furnished on or before the 5th day of April, 1957, as the names of the employes from whose wages no further deductions are to be made. Please advise."

The wage assignment revocation cards (Form A-2) which you have forwarded to me are spurious cards which have been printed by representatives of the Conductors' Organization.

Section 1(c) of the Dues Deduction Agreement (TRN 1-685) effective August 1, 1955, provides:

"Both the authorization forms and the revocation of authorization forms shall be reproduced and furnished as necessary by the Organization without cost to the Company. The Organization shall assume full responsibility for the procurement and execution of the forms by employes and for the delivery of such forms to the Company."

Since, under the rule, it is the sole responsibility of the Brotherhood of Railroad Trainmen to reproduce, procure, execute and deliver all revocation cards concerning wage assignments in favor of the Brotherhood, we do not recognize any revocation cards except those reproduced by our organization.

Employees desiring to execute wage assignment revocation cards (Form A-2), may procure them from the undersigned in person, or by a request in writing over their signature.

I am returning the cards herewith and you may advise the Conductors' Organization accordingly.

For your information we have executed bona fide revocation cards for the following:

Harold C. Barker	Effective April 1, 1957
Norman C. Cannon	" " " "
Julius G. DePaepe	" " " "
James D. Dunn	" " " "
Thomas N. Haldorson	" " " "
James E. Smith	" " " "
Hawley E. Counts	Effective May 1, 1957
Robert W. Kinkade	" " " "

Yours truly,

(Sgd.) J. W. Beardsley

Secretary-treasurer #314"

At all times in accordance with our agreement with the railroad, we had authorization forms for revocation "reproduced and furnished as necessary by the Organization", and all any member has ever had to do, or would have to do now, would be to advise me that he wants a revocation card and the date for it to become effective, and he would get his card and then the matter would be handled with the Company in accordance with our Dues Deduction Agreement.

If Mr. Felter and others who are allegedly similarly situated are being caused to suffer any inconvenience, it is of their own making and is a result of their own actions. Prompt relief could have been furnished by following the procedure set forth in the governing agreement. In this connection authorization for revocation of dues deductions would be furnished on the properly prescribed form, either by oral or written request.

At all times I have had in mind and followed the

following language from our Dues Deduction Agreement with the Southern Pacific Company:

"Revocation of the authorization shall be in the form agreed upon by the parties, copy of which is attachment 'B' and made a part hereof.

(c.) Both the authorization forms and the revocation of authorization forms shall be reproduced and furnished as necessary by the Organization without cost to the Company. The Organization shall assume full responsibility for the procurement and execution of the forms by employes and for the delivery of such forms to the Company.

3. Deductions as provided for herein will be made monthly by the Company from wages due employes for the first period in each calendar month, and the Company will, subject to the provisions of paragraph 4 hereof, remit to the Organization, the total amount of such deductions, less sums withheld in accordance with paragraph 5, on or before the 15th day of the month following the month in which such deductions are made. With such remittance the Company will furnish to the Treasurer of the Local Lodge a statement showing employes from whom deductions were made and amount of deductions."

Every member is furnished a copy of the above Agreement and is explained to him when he first signs the authorization for dues deduction.

The authorization card itself which every member signs authorizing the dues deduction is a part of the contract, and contains the following language:

“* * * as provided under the Deduction Agreement entered into by and between the Organization and the Company; * * *”

/s/ J. W. BEARDSLEY.

Subscribed and sworn to before me this 19th day of April, 1957.

[Seal] /s/ DOROTHY J. MOJICA,
Notary Public in and for the County of San Francisco, State of California. My commission expires May 13, 1957.

Placed among the papers in the case but never filed.

[Title of District Court and Cause.]

**AFFIDAVIT OF J. W. BEARDSLEY IN OP-
POSITION TO APPLICATION FOR
TEMPORARY RESTRAINING ORDER
AND/OR PRELIMINARY INJUNCTION**

State of California

City and County of San Francisco—ss.

J. W. Beardsley, being duly sworn, deposes and says that:

Willis E. Haight, who is mentioned in the complaint on the file herein as one of the plaintiffs similarly situated to Marion S. Felter is a member of the Brotherhood of Railroad Trainmen holding insurance in the organization which insurance is affected by the Dues Deduction Agreement as follows:

The premiums on the Brotherhood Life Insurance carried by Mr. Haight are paid concurrently with, and as a part of, his monthly dues and assessments. The continued status of this insurance is contingent upon his membership in the Brotherhood of Railroad Trainmen. If the restraining order is continued in effect it would naturally withhold from the Brotherhood premiums on the life insurance in effect in behalf of Mr. Haight as well as organization dues and assessments. Such withholding of insurance premium monies will jeopardize, and may even serve to cancel this insurance. Affiant has recently been told by said W. E. Haight that Haight desires to keep this insurance and his membership in the Brotherhood of Railroad Trainmen and affiant, at the moment, is utterly confused as to how he could handle Mr. Haight's interests if the restraining order is continued without substituting some other procedure for the orderly procedure already set forth in the existing contractual arrangement with the railroad.

/s/ J. W. BEARDSLEY.

Subscribed and sworn to before me this 19th day of April, 1957.

[Seal] /s/ DOROTHY J. MOJICA,

Notary Public in and for the City and County of San Francisco, State of California. My commission expires May 13, 1957.

Placed among the papers in the case but never filed.

[Title of District Court and Cause.]

ANSWER TO COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Come now defendants, Brotherhood of Railroad Trainmen, a voluntary association; J. J. Corcoran, as General Chairman, General Committee, Brotherhood of Railroad Trainmen; and J. E. Teague, as Secretary, General Committee, Brotherhood of Railroad Trainmen, and for answer to the complaint filed herein, state the following:

I.

Said defendants above named admit the allegations in Paragraphs I to VI inclusive, except as hereinafter denied in connection with the claim of Marion S. Felter to represent others similarly situated.

II.

In answer to paragraph VII of the complaint, defendants admit that this suit is brought in connection with the Railway Labor Act Title 45, USCA Sec. 151, et seq., but deny that this court has jurisdiction over the subject matter, and that the case essentially involves the question of interpretation of the contract which is under the jurisdiction of the National Railroad Adjustment Board rather than the United States District Court.

III.

Defendants admit the allegations in paragraphs VIII, IX, and X of said complaint.

IV.

With regard to the allegations in paragraph XI of said complaint defendants, Brotherhood of Railroad Trainmen, a voluntary association; J. J. Corcoran, as General Chairman, General Committee, Brotherhood of Railroad Trainmen; and J. E. Teague, as Secretary, General Committee, Brotherhood of Railroad Trainmen, admit these allegations but allege that the so-called written revocation is not handled through the designated secretary and treasurer of the Brotherhood of Railroad Trainmen and did not comply with the Dues Deduction Agreement in this connection.

V.

Defendants hereinbefore mentioned admit the allegations in paragraph XII, but allege that the carrier and Brotherhood are insisting that the arrangements made in the contract with notification through the secretary and treasurer be followed in order for the dues deduction and revocations to become effective.

VI.

Defendant Brotherhood and its officers admit the allegations in paragraphs XIII and XIV of the complaint, but allege that they are, in this connection, merely insisting that the Dues Deduction Agreement be followed, and they are simply relying on the language and meaning of that agreement.

VII.

In view of the apparent lack of dispute as to

the factual situation and the Dues Deduction Agreement in question, defendant Brotherhood and its officers allege that this is a proper case for the court to render a declaratory judgment with reference to the effect of the agreement herein involved, and therefore, deny the allegations in paragraph XV of the said complaint.

Wherefore, defendants, Brotherhood of Railroad Trainmen, a voluntary association; J. J. Corcoran, as General Chairman, General Committee, Brotherhood of Railroad Trainmen; and J. E. Teague, as Secretary, General Committee, Brotherhood of Railroad Trainmen, pray for a summary judgment that said Dues Deduction Agreement is wholly valid and enforceable and in accordance with the Railway Labor Act, Section 211 (b), and that this action should, therefore, be dismissed both on the ground that the defendants are complying with the terms of said Dues Deduction Agreement, and on the further ground that any interpretation of said Dues Deduction Agreement would be under the jurisdiction of the National Railroad Adjustment Board and not of this court; and for such other relief as may be meet in the premises.

HILDEBRAND, BIKLS & McLEOD,

/s/ By CLIFTON HILDEBRAND,

Attorneys for defendants, Brotherhood of Railroad Trainmen, a voluntary association; J. J. Corcoran, as General Chairman, General Committee, Brotherhood of Railroad Trainmen; and

J. E. Teague, as Secretary, General Committee, Brotherhood of Railroad Trainmen.

Duly Verified.

[Endorsed]: Filed April 30, 1957.

[Title of District Court and Cause.]

AFFIDAVIT OF CLIFTON HILDEBRAND

State of California

County of Alameda—ss.

Clifton Hildebrand, being duly sworn, deposes and says:

That he is one of the attorneys for defendants, Brotherhood of Railroad Trainmen, a voluntary association; J. J. Corcoran, as General Chairman, General Committee, Brotherhood of Railroad Trainmen; and J. E. Teague, as Secretary, General Committee, Brotherhood of Railroad Trainmen.

That he has read the affidavit of Richard B. McDonough on file herein in connection with the affidavit in support of temporary restraining order, and particularly, that he has read Exhibit "E" attached to said affidavit, which purports to be a list of a portion of the individuals who are similarly situated to plaintiff in this controversy. Among those thus listed as supposedly being individuals similarly situated to plaintiff are the following:

Glenn H. Ross

Ross V. Miller

Thomas A. Henderson

Joseph J. Ploub, Jr.

Willis E. Haight

James E. Smith

Harvey E. Harmon

Harold C. Barker

Charles N. Speight

Clarence W. Everts, Sr.

Fed A. Copeland

There are attached hereto copies of statements signed in their own handwriting by the above mentioned persons repudiating this alleged class action and, in most instances, expressing the desire to remain in the Brotherhood of Railroad Trainmen. The witnesses to these statements, M. E. Borgaard and J. W. Beardsley, will be present at the hearing of the motion for summary judgment or to dismiss, so that their testimony may be heard, if the court so desires.

/s/ CLIFTON HILDEBRAND.

Sworn to and subscribed before me this 29th day of April, A.D. 1957.

[Seal] /s/ CAROLYN STYLER,
Notary Public in and for the State of California,
County of Alameda.

(Copy)

Eugene, Oregon

April 23, 1957

I Glenn H. Ross did in no way give to the Order of Railway Conductors and Brakeman or to the plaintiff Marion S. Felter my name as individual similarly situated in pending suit against Brotherhood of Railroad Trainmen and the Southern Pacific Co.

And wish to remain in Brotherhood of Railroad Trainmen in good standing.

Glenn H. Ross,

Conductor,

Eugene, Oregon

Witness: J. W. Beardsley.

Witness: M. E. Borgaard.

(Copy)

Rsbg. Ore.

April 23-57

I R. V. Miller did in no way give to the Order of Railway Conductors and Brakemen or to the plaintiff Marion S. Felter my name as individual similarly situated in pending suit against Brotherhood of Railroad Trainmen and the Southern Pacific Co.

And wish to remain in Brotherhood of Railroad Trainmen in good standing.

Robert V. Miller,

Cond.,

Rsbg., Oregon.

Witness: J. W. Beardsley.

Witness: M. E. Borgaard.

(Copy)

Springfield, Ore.

4/22/57

I Thomas A. Henderson have been named as similarly situated as individuals to plaintiff Marion S. Felter in pending suit against the Brotherhood of Railroad Trainmen and the Southern Pacific Co.

I was contacted by M. G. Breuner, local chairman of the ORC&B and asked by him to sign a complaint against the Brotherhood of Railroad Trainmen and be part of a suit naming the organization and the Southern Pacific Co. for not honoring the wage revocation cards which they have had printed.

I did in no way give my name, sign any form or allow them to use my name for any purpose of bringing suit against the Brotherhood of Railroad

Trainmen or the Southern Pacific Co. I wish to remain a member of the Brotherhood of Railroad Trainmen..

Thomas A. Henderson,
Conductor,
Springfield, Oregon.

Witness: M. E. Borgaard.

Witness: J. W. Beardsley.

(Copy)

Eugene, Oregon

April 22, 1957

I, Jacob J. Ploub Jr. did in no way give to the Order of Railway Conductor and Brakeman or to plaintiff Marion S. Felter my name as individuals similarly situated in pending suit against Brotherhood of Railroad Trainmen and the Southern Pacific Co. I wish to remain and keep my membership in good standing with the Brotherhood of Railroad Trainmen and I do not wish to be included this suit with Marion S. Felter against the Brotherhood of Railroad Trainmen and the Southern Pacific Co.

Jacob J. Ploub Jr.,
Conductor,
Eugene, Oregon.

Witness: M. E. Borgaard.

Witness: J. W. Beardsley.

(Copy)

Eugene, Oregon

April 22, 1957

I Willis E. Haight did in no way give to the Order of Railway Conductor and Brakeman or to plaintiff Marion S. Felter my name as individuals

similarly situated in pending suit against Brotherhood of Railroad Trainmen and the Southern Pacific Co. I wish to remain and keep my membership in good standing with the Brotherhood of Railroad Trainmen. And I do not wish to be included in this suit with Marion S. Felter against the Brotherhood and the Southern Pacific Co.

Willis E. Haight,
Conductor,
Eugene, Ore.

Witness: M. E. Borgaard.

Witness: J. W. Beardsley.

(Copy)

Eugene, Oregon
April 22, 1957

I, James E. Smith, did in no way give to the Order of Railway Conductors and Brakemen or to Plaintiff Marion S. Felter my name as individuals similarly situated in pending suit against Brotherhood of Railroad Trainmen and the Southern Pacific Co.

Although my membership in the Brotherhood of Railroad Trainmen terminates as of May first 1957, I do not wish to be included in this pending suit.

James E. Smith,
Conductor,
Eugene, Ore.

Witness: M. E. Borgaard.

Witness: J. W. Beardsley.

(Copy)

Springfield, Oreg.

April 23, 1957

I Harvey E. Harmon did in no way give to the Order of Railway Conductors and Brakemen or to Plaintiff Marion S. Felter my name as individual similarly situated in pending suit against Brotherhood of Railroad Trainmen and the Southern Pacific Co.

Harvey E. Harmon,
Conductor,
Springfield, Oregon.

Witness: J. W. Beardsley.

Witness: M. E. Borgaard.

(Copy)

Eugene, Oregon

April 23, 1957

I, Harold C. Barker, did not give the Order of Railway Conductors and Brakemen or the Plaintiff Marion S. Felter permission to use my name in a suit against the Brotherhood of Railroad Trainmen and the Southern Pacific Co.

I wish to state that I had no trouble getting a release from the Railroad Trainmen after I properly requested a A-2 Card from Secretary John Beardsley which was promptly furnished me without any delay.

Harold C. Barker,
Conductor SP Co.,
Eugene, Oregon.

Witness: M. E. Borgaard.

Witness: J. W. Beardsley.

(Copy)

Springfield, Ore.

April 22, 1957

I, Charles N. Speight, did in no way give to the Order of Railway Conductors and Brakemen or to Plaintiff Marion S. Felter my name as individual similarly situated in pending suit against Brotherhood of Railroad Trainmen and the Southern Pacific Co.

Charles N. Speight,
Conductor,
Springfield, Oregon.

Witness: M. E. Borgaard.

Witness: J. W. Beardsley.

(Copy)

Eugene, Ore.

4-22-57

I, Clarence W. Everts, Sr. did in no way give my name to the Order of Railroad Conductors and Brakemen or to the plaintiff Marion S. Felter to be used in Civil Action Suit against the Brotherhood of Railroad Trainmen or the Southern Pacific Company.

I was never contacted by anyone of the Order of Railroad Conductors and Brakemen or by Marion S. Felter and therefore my name used in this civil action, and as I have been identified as similarly situated to the plaintiff Mr. Marion S. Felter. I wish to state that the using of my name is against my will and judgment and without my permission.

I wish to remain a member of the Brotherhood of Railroad Trainmen and in no way be involved

in a civil action against my organization or my employer The Southern Pacific Company.

Clarence W. Everts Sr.,
Conductor,
Eugene, Ore.

Witness: M. E. Borgaard.

Witness: J. W. Beardsley.

(Copy)

Eugene, Oregon
April 22, 1957

I, Fred A. Copeland did in no way give to the Order of Railway Conductors and Brakemen or to plaintiff Marion S. Felter my name as individuals similarly situated in pending suit against Brotherhood of Railroad Trainmen and the Southern Pacific Co. I wish to remain and keep my membership in good standing with the Brotherhood of Railroad Trainmen and I do not wish to be included in this suit with Marion S. Felter against the Brotherhood of Railroad Trainmen and the Southern Pacific Co.

Fred A. Copeland,
Conductor,
Eugene, Oregon.

Witness: M. E. Borgaard.

Witness: J. W. Beardsley.

[Endorsed]: Filed April 30, 1957.

[Title of District Court and Cause.]

**MOTION FOR SUMMARY JUDGMENT
OR TO DISMISS**

The defendants, Brotherhood of Railroad Trainmen, a voluntary association; J. J. Corcoran, as General Chairman, General Committee, Brotherhood of Railroad Trainmen; and J. E. Teague, as Secretary, General Committee, Brotherhood of Railroad Trainmen, move the court as follows:

For summary judgment in their favor and in favor of the Southern Pacific Company, a corporation, and against plaintiff, Marion S. Felter on behalf of himself and others similarly situated, for the reason that there is no dispute about the facts or the agreement in question. The only dispute arises on the reasonableness of the agreement and the interpretation of the agreement as a matter of law in the light of the applicable provisions of the Railway Labor Act and particularly of that portion of the Railway Labor Act covered in 45 U.S.C.A. 152, Eleventh (b). In this connection it is the position of both the Southern Pacific Company and the Brotherhood of Railroad Trainmen and its defendant officers that a proper interpretation of the law and the "Dues Deduction Agreement" previously introduced in evidence on the hearing for continuing and restraining order support the position taken by the Brotherhood and its officers herein to defeat the position taken by the plaintiff, *Milton S. Felter*, on behalf of himself and others similarly situated. The question involved

is merely a matter of legal interpretation of the law with reference to the undisputed facts.

HILDEBRAND, BILLS & McLEOD,

/s/ By CLIFTON HILDEBRAND,

Attorneys for Defendants, Brotherhood of Railroad Trainmen, a voluntary association; J. J. Corcoran, as General Chairman, General Committee, Brotherhood of Railroad Trainmen, and J. E. Teague, as Secretary, General Committee, Brotherhood of Railroad Trainmen.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed April 30, 1957.

[Title of District Court and Cause.]

AFFIDAVIT OF M. G. BREUNER

State of California

City and County of San Francisco—ss.

M. G. Breuner, being first duly sworn, deposes and says:

Your affiant resides at 100 Gilham Road, Eugene, Oregon.

At all times mentioned herein your affiant is and has been the local chairman of Division Number 526 of the Order of Railway Conductors. In such capacity, affiant has dealt with the plaintiff, Marion S. Felter, in the above entitled matter, and with the other persons similarly situated to the plaintiff

in connection with the subject of this action, and affiant has personal knowledge as to the circumstances involved and hereinafter set forth.

I have read the affidavits of J. W. Beardsley dated April 19, 1957, and on file in the above entitled matter, and the affidavit of Clifton Hildebrand dated April 29, 1957, also on file herein.

With respect to the persons named in the affidavit of Clifton Hildebrand, following are the facts as I know them:

Glenn H. Ross, Thomas A. Henderson, Jacob J. Ploub, Jr., Clarence W. Everts, Sr., and Fred A. Copeland each executed wage assignment revocation forms on or about March 30, 1957, or prior thereto, and said wage assignment revocation forms were forwarded by me on behalf of said individuals to J. W. Beardsley, Secretary and Treasurer of Lodge Number 314 of the Brotherhood of Railroad Trainmen at Eugene, Oregon.

Robert W. Miller, James E. Smith and Harold C. Barker likewise executed the same type of wage assignment revocation forms on or about the same dates, and said forms were forwarded by me to J. W. Beardsley. Thereafter James E. Smith and Harold C. Barker each obtained another wage assignment revocation form from the Brotherhood of Railroad Trainmen, which they executed. However, to my knowledge, the Brotherhood of Railroad Trainmen has not honored the aforesaid revocation form submitted for Robert W. Miller.

Harvey E. Harmon and Charles N. Speight on

or about March 30, 1957, each executed wage assignment revocation forms, which in turn were forwarded by me both to J. W. Beardsley of the Brotherhood of Railroad Trainmen and to L. R. Smith, Superintendent, Portland Division, Southern Pacific Company. To the knowledge of your affiant, the Brotherhood of Railroad Trainmen and the Southern Pacific Company have refused and are refusing to honor said forms submitted on behalf of Harvey E. Harmon and Charles N. Speight.

With regard to Willis E. Haight, no wage assignment revocation form was executed by Mr. Haight and his inclusion on the list of those similarly situated to Marion S. Felter in the original pleadings on file herein was an error.

In addition to the persons named above, Don T. Skundrick and Walter M. Skundrick are similarly situated to the plaintiff in this action in that on or about March 30, 1957, or prior thereto, they executed wage assignment revocation forms, which forms were forwarded by me on their behalf to Lodge Number 130 of the Brotherhood of Railroad Trainmen in Portland, Oregon. To the knowledge of your affiant, these wage assignment revocation forms have not been honored by the Brotherhood of Railroad Trainmen.

In addition to those above named, J. L. Graham, R. E. Biddle and J. J. Nelson are now similarly situated to the plaintiff, in that they have executed wage assignment revocation forms to be effective May 1, 1957, which forms have been forwarded by

me on their behalf to J. W. Beardsley of the Brotherhood of Railroad Trainmen and to the said L. R. Smith of the Southern Pacific Company. Attached hereto as Exhibit A is a copy of my letter of April 26, 1957, to L. R. Smith in connection with the wage assignment revocation forms of the said J. L. Graham, R. E. Biddle and J. J. Nelson. Based upon the position taken by the Brotherhood of Railroad Trainmen, as set forth in the aforementioned affidavit of J. W. Beardsley, and the position taken by the Southern Pacific Company in these proceedings, it appears that the wage assignment revocation forms of the said J. L. Graham, R. E. Biddle and J. J. Nelson will not be honored as of May 1, 1957, and therefore said persons are similarly situated to the plaintiff herein.

As to R. W. Kinkade, mentioned in my letter of April 26, 1957, it appears from Mr. Beardsley's affidavit that a wage assignment revocation form heretofore submitted by Mr. Kinkade will be honored.

Referring to my letter of March 30, 1957, to Mr. L. R. Smith of the Southern Pacific Company, which letter is attached as Exhibit C to the affidavit of Richard B. McDonough dated April 16, 1957, on file herein, and based upon the hereinabove recited facts, it now appears that within your affiant's knowledge the following listed persons are presently similarly situated to Marion S. Felter. Each of these persons had notice of the

institution of this litigation by the plaintiff and acquiesced or do now acquiesce in the bringing of this action by the plaintiff on behalf of himself and others similarly situated. Said persons are as follows:

H. E. Counts	Harvey E. Harmon
E. H. Stankey	Charles N. Speight
A. E. Ebbensen	Don T. Skundrick
L. A. West	Walter M. Skundrick
H. R. Robinson	J. L. Graham
Charles Vincent	R. E. Biddle
Robert V. Miller	J. J. Nelson

All of the above named persons, together with Marion S. Felter, the plaintiff, are members of the Order of Railway Conductors, and the Order of Railway Conductors is their bargaining agent. Under these circumstances and pursuant to the terms of the Railway Labor Act and the union shop agreements between the Southern Pacific Company and the Brotherhood of Railroad Trainmen and the Order of Railway Conductors, the job status, the seniority and the union membership of these employees of the Southern Pacific Company may in no way be affected by any action of the Brotherhood of Railroad Trainmen or of the Southern Pacific Company by reason of the withdrawal of these employees, or any of them, from membership in the Brotherhood of Railroad Trainmen, or by reason of the failure of the company to deduct dues and other moneys from the compensation of these employees for payment to the Broth-

erhood of Railroad Trainmen during the pendency of the temporary restraining order in the above entitled matter or subsequent proceedings. This is true for the reason that both the law and the said union shop agreements permit the above named employees to change their membership from the Brotherhood of Railroad Trainmen to the Order of Railway Conductors, without loss of benefits, seniority or job security, and in making such change the above named employees have acted fully within their rights guaranteed to them by law and said agreements. Similarly, under the law no further deductions should be made from their wages for payment of any moneys to the Brotherhood of Railroad Trainmen by reason of the fact that each one of said employees has filed with the company and with the Brotherhood a revocation of all authority heretofore given to make such deductions.

/s/ M. G. BREUNER.

Subscribed and sworn to before me this 30th day of April, 1957.

[Seal] /s/ GEORGETTE LINDEY,

Notary Public in and for the City and County of San Francisco, State of California. My commission expires April 30, 1960.

Acknowledgment of Service Attached.

EXHIBIT "A"

Order of Railroad Conductors

Division Number 526

Southern Pacific Lines

Eugene, Oregon

April 26, 1957

Mr. L. R. Smith, Superintendent
Portland Division—Southern Pacific Company
Portland, Oregon

Dear Sir:

Herewith properly signed Dues Deduction Revocation forms. These forms have been signed by employees working in the class and craft of conductors-brakemen, who had previously signed Wage Deduction Authorizations for the dues to be paid to the Brotherhood of Railroad Trainmen.

While this Revocation of Dues Deduction form has also been forwarded to the proper Treasurer of the Brotherhood of Railroad Trainmen, it is our understanding that he may decline to submit same to you for the purpose of it being made effective.

So that the employee whose signature appears on the enclosed forms may, under the circumstances, be sure that the Carrier has received such revocation, he has personally requested that I transmit these forms to you.

Will you kindly place in effect the Revocation of Dues Deduction for the men herewith listed, for whom the proper cards are enclosed.

The men involved are: J. L. Graham, R. W. Kinkade, R. E. Biddle, J. J. Nelson.

Respectfully yours,

M. G. Breuner.

[Endorsed]: Filed May 2, 1957.

[Title of District Court and Cause.]

AFFIDAVIT OF H. F. BROWN

State of California

City and County of San Francisco—ss.

H. F. Brown, being first duly sworn, deposes and says:

Affiant is and has been at all times mentioned herein the Chairman of the General Committee of Adjustment of the Order of Railway Conductors; that in such capacity he has knowledge of and is familiar with the facts and circumstances involved in the above entitled matter.

In addition to the persons named in the affidavit of M. G. Breuner on file herein, your affiant has knowledge that the following named persons are also similarly situated to the plaintiff, Marion S. Felter, in the above matter, in that they have withdrawn from membership in the Brotherhood of Railroad Trainmen and each of them has submitted an executed wage assignment revocation form to the Brotherhood of Railroad Trainmen and to the Southern Pacific Company. Based upon the position taken by the Brotherhood of Railroad Train-

men in connection with this matter as set forth in the affidavit of J. W. Beardsley on file herein, and the position taken by the Southern Pacific Company in the above litigation, it appears that the wage assignment revocation forms submitted on behalf of the persons named below will not be honored. Each of said employees of the Southern Pacific Company has joined the Order of Railway Conductors. They are as follows:

Jack E. H. Gray, 711 North Oregon Street, El Paso, Texas.

Frank J. Sebastian, 7602 Parral Road, El Paso, Texas.

Frank P. Kennison, 1820 Park Blvd., Oakland, California.

Attached to this letter are copies of the letters sent by Jack E. H. Gray and Frank J. Sebastian, to the Southern Pacific Company and to the Brotherhood of Railroad Trainmen, effecting their wage assignment revocation and their withdrawal from the Brotherhood of Railroad Trainmen.

/s/ H. F. BROWN

Subscribed and sworn to before me this 30th day of April, 1960.

[Seal] /s/ GEORGETTE LINDEY,

Notary Public in and for the City and County of San Francisco, State of California. My commission expires April 30, 1960.

Mr. J. W. Donnelly, Treas.

El Paso, Texas

BRT Lodge #651

April 19, 1957

1416 Oakdale Dr.

El Paso, Texas

Dear Sir and Brother:

Effective June 1, 1957, I hereby withdraw from the Brotherhood of Railroad Trainmen.

My dues and assessments for the month of May will be paid by deduction from my paycheck on the check-off system.

Fraternally yours,

Jack E. H. Gray,

711 North Oregon,

El Paso, Texas.

cc: Mr. J. H. Long, Supt.

Southern Pacific Railway Co.

El Paso, Texas

El Paso, Texas

Mr. J. H. Long, Supt.

April 19, 1957

Southern Pacific Railway Co.

El Paso, Texas

Dear Sir:

Attached is copy of letter mailed this date to the Treasurer of BRT Lodge #651. You will note that as of June 1st I am terminating my membership in the Brotherhood of Railroad Trainmen, and in accordance with the Railway Labor Act as amended, Section 2 Eleventh, this is written notice that, after deduction from my pay check of Brotherhood of Railroad Trainmen's dues and assessments for the month of May, 1957, I respectfully request no fur-

ther deductions be made for such dues and/or assessments for the Brotherhood of Railroad Trainmen.

I am also attaching signed copy of the form revocation notice which I understand is required under the check-off agreement between the BRT and the Southern Pacific Railroad Company.

Respectfully yours,

Jack E. H. Gray,
711 N. Oregon,
El Paso, Texas.

cc: Mr. J. W. Donnelly, Treas.
BRT Lodge #651

Mr. J. W. Donnelly
Treas., BRT Lodge #651
1416 Oakdale Dr.
El Paso, Texas

El Paso, Texas
April 19, 1957

Dear Sir and Brother:

Effective May 1, 1957, I hereby withdraw from the Brotherhood of Railroad Trainmen.

My dues and assessments for the month of April will be paid by deduction from my paycheck on the check-off system.

Fraternalty yours,

Frank J. Sebastian
7602 Parral Rd.
El Paso, Texas.

cc: Mr. J. H. Long, Supt.
Southern Pacific Railway Co.
El Paso, Texas

Mr. J. H. Long, Supt.
Southern Pacific Railway Co.
El Paso, Texas

El Paso, Texas
April 19, 1957

Dear Sir:

Attached is copy of letter mailed this date to the Treasurer of BRT Lodge #651. You will note that as of May 1st I am terminating my membership in the Brotherhood of Railroad Trainmen, and in accordance with the Railway Labor Act as amended, Section 2 Eleventh, this is written notice that, after deduction from my pay check of Brotherhood of Railroad Trainmen's dues and assessments for the month of April, 1957, I respectfully request no further deductions be made for such dues and/or assessments for the Brotherhood of Railroad Trainmen.

I am also attaching signed copy of the form revocation notice which I understand is required under the check-off agreement between the BRT and the Southern Pacific Railroad Company.

Respectfully yours,

Frank J. Sebastian,
7602 Parral Road,
El Paso, Texas.

cc: Mr. J. W. Donnelly, Treas.
BRT Lodge #651
1416 Oakdale Dr.
El Paso, Texas

Acknowledgment of Service Attached.

[Endorsed] Filed May 2, 1957.

[Title of District Court and Cause.]

MOTION FOR SUMMARY JUDGMENT

Comes now the plaintiff, Marion S. Felter, on behalf of himself and others similarly situated, and moves the Court as follows:

For a summary judgment in favor of the plaintiff and others similarly situated against the defendant Southern Pacific Company, a corporation; and against the defendants Brotherhood of Railroad Trainmen, a voluntary association; J. J. Corcoran, as General Chairman, General Committee, Brotherhood of Railroad Trainmen; and J. E. Teague, as General Secretary, General Committee, Brotherhood of Railroad Trainmen, permanently enjoining and restraining the defendant Southern Pacific Company from deducting from the wages of the plaintiff and others similarly situated any periodic dues, initiation fees and/or assessments, and paying the same to the defendant Brotherhood of Railroad Trainmen, its agents or representatives; and permanently enjoining and restraining the Brotherhood of Railroad Trainmen, its officers and components, from claiming and receiving from the Southern Pacific Company any portion of the wages due plaintiff and others similarly situated; and permanently enjoining and restraining each of the above named defendants from otherwise performing any acts which would have the effect of deducting any sums from the wages of the plaintiff and others similarly situated to be paid to and

received by the Brotherhood of Railroad Trainmen, or any of the officers or components thereof; and that this moving plaintiff be awarded his costs and such other and further relief as may be meet and proper in the premises.

This motion is based upon the files and records in the above entitled court and cause, and particularly upon the Complaint for Declaratory and Injunctive Relief filed herein by plaintiff, on behalf of himself and others similarly situated, the Answer to the complaint filed herein by the defendant Brotherhood of Railroad Trainmen, and the officers and components thereof, and the affidavits and other evidence in the record.

In presenting the foregoing motion, counsel for this moving plaintiff, on behalf of himself and others similarly situated, will contend that upon the files and records herein there is no substantial, if any, issue of fact, as between the parties hereto; that the only substantial issues before the Court concern the validity of the written revocations of their assignment of wages for the payment of dues to the Brotherhood of Railroad Trainmen by the plaintiff and others similarly situated, which written revocations are acknowledged to have been received by the defendants; and that in this connection it is the position of this moving plaintiff and others similarly situated that by reason of the provisions of Section 2, Eleventh of the Railway Labor Act (45 U.S.C.A. 15,211), defendant Southern Pa-

cific Company is without authority to make such deductions from the wages of the plaintiff and others similarly situated, and defendants Brotherhood of Railroad Trainmen, its officers and components, are without authority to receive such moneys; that the continued refusal on the part of the defendants to honor the said revocations of assignment of wages has injured and continues to injure the moving plaintiff and others similarly situated by depriving them of their rights guaranteed by law to withdraw from membership in the Brotherhood of Railroad Trainmen and to revoke in writing after the expiration of one year any written assignment to the Brotherhood of Railroad Trainmen of membership dues, initiation fees and/or assessments; that any agreement between the defendant Southern Pacific Company and the defendant Brotherhood of Railroad Trainmen which purports to prevent the plaintiff and others similarly situated from revoking in writing said assignments of wages, except in the manner provided by law, is invalid and of no force and effect as against this moving plaintiff and others similarly situated.

Dated May 3, 1957.

CARROLL, DAVIS & BURDICK,

/s/ By ROLAND C. DAVIS,

Attorneys for Plaintiff.

[Endorsed]: Filed May 3, 1957.

[Title of District Court and Cause.]

ANSWER TO COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Comes now the defendant, Southern Pacific Company, a corporation, and for answer to the complaint filed herein states the following:

I.

Said defendant admits the allegations in paragraphs I to VII, inclusive.

II.

Defendant admits the allegations in paragraphs VIII, IX and X of the complaint.

III.

In answer to paragraph XI of the complaint, defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation contained in the first sentence thereof and, therefore, denies that on or before March 1, 1956, or at any time, plaintiff and others similarly situated terminated their membership in the Brotherhood. With regard to remainder of the allegations contained in paragraph XI of the complaint, defendant is without knowledge or information sufficient to form a belief as to the truth of the averment that on or before March 1, 1956, the plaintiff and others similarly situated sent a written revocation of their assignment of wages for the payment of dues to the Brotherhood to the defend-

ant Brotherhood and therefore denies said allegation. Defendant admits that plaintiff and others similarly situated sent to the defendant carrier so-called written revocations of their assignment of wages for the payment of dues to the Brotherhood except that it denies that said revocations were sent on or before March 1, 1956, and defendant further alleges that so-called written revocations were not handled through the designated secretary and treasurer of the Brotherhood of Railroad Trainmen and did not comply with the dues deduction agreement in this connection.

IV.

In answer to paragraph XII of the complaint, the defendant admits the allegations thereof but alleges that the so-called written revocations were not submitted to the defendant carrier in the manner required by the dues deduction agreement.

V.

In answer to paragraph XIII, defendant is without knowledge or information sufficient to form a belief as to the truth thereof and therefore denies the allegations of paragraph XIII.

VI.

Defendant admits the allegations of paragraph XIV.

VII.

Defendant denies that plaintiff or others similarly situated did disavow the Brotherhood as their representative for collective bargaining purposes.

so long as they were working in the class or craft of trainmen because the Brotherhood was at all times material hereto certified under the Railway Labor Act to represent such class or craft. Defendant admits the other allegations of paragraph XV of the complaint, but alleges that the refusal of defendant carrier to honor the purported revocations of assignment of wages to the Brotherhood of which plaintiff and others similarly situated are allegedly no longer members is based solely upon the fact that the same were not presented in accordance with the applicable collective bargaining agreement between defendant carrier and the **Brotherhood.**

Wherefore, defendant Southern Pacific Company, a corporation, prays that this Court grant the relief asked for in paragraph (1) of the prayer of the complaint and deny the remainder of the relief requested by plaintiff in his complaint.

Dated: May 8, 1957.

BURTON MASON,
W. A. GREGORY,
H. S. LENTZ,

/s/ By W. A. GREGORY,
Attorneys for Defendant,
Southern Pacific Company.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed May 8, 1957.

In the United States District Court, Northern
District of California, Southern Division

No. 36348

MARION S. FELTER, on behalf of himself and
others similarly situated, Plaintiff,

vs.

SOUTHERN PACIFIC COMPANY, a corpora-
tion; BROTHERHOOD OF RAILROAD
TRAINMEN, a voluntary association;
J. J. CORCORAN, as General Chairman, etc.,
Defendants.

ORDER

The cross motions for summary judgment which are before this court involve an interpretation of Section 2, Eleventh of the Railway Labor Act, 45 U.S.C. 152, Eleventh. The pertinent parts of this section read:

* * * any carrier or carriers as defined in this chapter and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this chapter shall be permitted—

(a) to make agreements, requiring, as a condition of continued employment, that * * * all employees shall become members of the labor organization representing their craft or class: * * *

(b) to make agreements providing for the deduction by such carrier or carriers from the wages of

its or their employees in a craft or class and payment to the labor organization representing the craft or class of such employees, of any periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership: Provided, That no such agreement shall be effective with respect to any individual employee until he shall have furnished the employer with a written assignment to the labor organization of such membership dues, initiation fees, and assessments, which shall be revocable in writing after the expiration of one year or upon the termination date of the applicable collective agreement, whichever occurs sooner.

(c) The requirement of membership in a labor organization in an agreement made pursuant to subparagraph (a) of this paragraph shall be satisfied * * * if said employee shall hold or acquire membership in any one of the labor organizations, national in scope, organized in accordance with this chapter and admitting to membership employees of a craft or class in any of said services; * * * Provided, further, That nothing herein or in any such agreement or agreements shall prevent an employee from changing membership from an organization to another organization admitting to membership employees of a craft or class in any of said services.

Pursuant to the permission granted by the Act, defendants Southern Pacific Company and Brotherhood of Railroad Trainmen entered into a dues deduction agreement. The agreement provided that

employee members of the Brotherhood could authorize deductions from their wages, or revoke such authorization; by completing prescribed forms to be reproduced and furnished by the Brotherhood. The Brotherhood was to notify the Company of these wage assignments and revocations of wage assignments by forwarding the completed forms, together with deduction lists, by the fifth day of each month. The assignments and revocations thus forwarded would be effective as of the first day of that month.

Plaintiff is employed as a conductor by the Southern Pacific Company. On or before February 1, 1956, plaintiff executed a wage assignment in accordance with the above agreement. After this assignment had been in effect for over a year, he decided to change his membership to the Order of Railway Conductors and Brakemen,¹ and he so notified the Brotherhood in a letter dated March 30, 1957 and received by the Brotherhood on April 2nd. At the same time, wage assignment revocation cards were furnished by the ORCB, completed by plaintiff and forwarded by the ORCB to the Brotherhood and the Company. These cards followed the form prescribed by the dues deduction agreement and in all material respects were identical with the cards furnished by the Brotherhood. The card sent to the Company was forwarded by the Company to the Brotherhood in a letter dated April 1, 1957, while the card which came directly from the ORCB was received by the Brotherhood on March 30th.

The Brotherhood replied to plaintiff's letter in a

¹ Formerly the Order of Railroad Conductors.

letter dated April 2nd, stating that the cards furnished by the ORCB were not acceptable because the dues deduction agreement provided that wage assignment revocation cards were to be reproduced and furnished by the Brotherhood. The letter went on to state that one of the Brotherhood's cards was enclosed and that as the wage assignment papers for April were to be forwarded to the Company the next morning, the new card would not be effective until May 1st.

Plaintiff did not complete the new card furnished by the Brotherhood; the Brotherhood did not forward plaintiff's name to the Company as one whose wage assignment was to be revoked; and the Company therefore continued to regard plaintiff's wage assignment as in full effect. This action was brought on behalf of plaintiff "and others similarly situated,"² seeking, together with appropriate injunctive relief, a determination that the action of the Brotherhood and the Southern Pacific Company in refusing to accept plaintiff's attempted revocation of wage assignment is a violation of plaintiff's rights under the Railway Labor Act.

Neither side presses this court for an interpretation of the dues deduction agreement. The sole question is whether the agreement as interpreted by the defendants is violative of the Railway Labor Act.

Although the proviso in Section 2, Eleventh (c) protecting the employee's right to change unions is

² There is some dispute as to whether there are in fact others similarly situated, but this question does not affect the outcome of the case.

in terms wholly unrestricted, it must be given a workable interpretation. A change in unions, and thus a change in dues deductions, obviously involves many bookkeeping and records changes on the railroad's part. It follows from this that employees cannot willy-nilly skip from one union to another, that some sort of orderly procedure has to be established. The dues deduction agreement between the Brotherhood and the Company sought to establish just such an orderly procedure. The only question is whether the procedure established by this agreement places such an unreasonable burden on employees who wish to withdraw from the Brotherhood that it operates as a violation of an employee's right under the Act to change unions.

The part of the withdrawal procedure which is complained of is the requirement that a revocation card must be secured from the Brotherhood. While this requirement may seem a bit arbitrary, it certainly is no burden. It is easily complied with, and is not appreciably more difficult than securing a revocation card from some other source. The only burden here would seem to be on the rival union, which perhaps cannot as easily recruit new members; and this is not determinative of the issue. *Pennsylvania Railroad Company et al. v. Ryehlik*, 352 U.S. 480 (1957).

Accordingly, this court holds that the dues deduction agreement as interpreted by the defendants is a reasonable compliance with the Railway Labor Act and not violative of plaintiff's rights under the Act. It is ordered that the temporary restraining

order heretofore issued on April 12, 1957 be dissolved and that the action be dismissed.

Dated: May 24th, 1957.

/s/ EDWARD P. MURPHY,
United States District Judge.

[Endorsed]: Filed May 24, 1957.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Marion S. Felter, on behalf of himself and others similarly situated, plaintiff above named in the above entitled cause, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on June 24, 1957.

CARROLL, DAVIS & BURDICK,

/s/ By^e ROLAND C. DAVIS,
Attorneys for Plaintiff.

[Endorsed]: Filed June 20, 1957.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, hereby certify the foregoing and accompanying documents, listed below, are the originals filed in this Court in the above-entitled case and constitute

the record on appeal herein as designated by counsel for the appellants:

Excerpt from Docket Entries

Complaint

Affidavit of Richard B. McDonough

Bond for Temporary Restraining Order

Order to Show Cause and Temporary Restraining Order

Affidavit of Richard B. McDonough

Affidavit of J. W. Beardsley

Second Affidavit of J. W. Beardsley

Answer of Brotherhood of Railroad Trainmen;
J. J. Corcoran, General Chairman and J. E.
Teague, Secretary

Affidavit of Clifton Hildebrand

Notice of Motion and Motion of Brotherhood of
Railroad Trainmen et al. for Summary Judgment

Affidavit of M. G. Breuner

Affidavit of H. F. Brown

Notice of Motion and Motion of Plaintiff for
Summary Judgment

Answer of Southern Pacific Company

Order of Court Dissolving Temporary Restraining
Order and Dismissing the Complaint

Notice of Appeal

Order Granting Supersedeas

Supersedeas Bond

Designation of Record on Appeal

In Witness Whereof, I have hereunto set my

hand and affixed the seal of said District Court this 25th day of July, 1957.

[Seal] C. W. CALBREATH,
Clerk,

/s/ By MARGARET P. BLAIR,
Deputy Clerk.

[Title of District Court and Cause.]

STIPULATION CORRECTING AND SUPPLEMENTING RECORD ON APPEAL

Is Is Hereby Agreed and Stipulated by and among all parties in the above entitled matter that:

That certain agreement dated June 23, 1955, between the Southern Pacific Company (Pacific Lines), excluding lines formerly operated by the EP&SW, and the Brotherhood of Railroad Trainmen, commonly referred to as the "Dues Deduction Agreement," a true and correct copy of which is attached to this stipulation and incorporated herein by reference, is material to all parties and the inclusion of said agreement in the record on appeal in the above entitled matter is necessary for a full and final determination of the issues on appeal.

Said agreement was before this Court during the proceedings leading to the final order of this Court from which appeal is being taken. However, by error, accident or inadvertence, said agreement in its entirety was omitted from the record and, therefore, could not be designated as a part of the record

on appeal or transmitted by the Clerk of the District Court as part of said record.

In view of the foregoing circumstances, it is hereby stipulated and agreed by the parties hereto that this Court may direct that the omission of the aforesaid agreement, copy of which is attached hereto and made a part hereof, from the record should be corrected; and that this Court may direct that a supplemental record consisting of a true and correct copy of said agreement in its entirety shall be certified and transmitted by the Clerk of the District Court to the United States Court of Appeals for the Ninth Circuit as a part of said record on appeal.

Dated August 22, 1957.

CARROLL, DAVIS & BURDICK,

/s/ By ROLAND C. DAVIS,
Attorneys for Plaintiff.

BURTON MASON,

W. A. GREGORY,

/s/ By W. A. GREGORY,
Attorneys for Defendant Southern
Pacific Company.

HILDEBRAND, BELLS & McLEOD,

/s/ By CLIFTON HILDEBRAND,
Attorneys for Defendants Brotherhood of Railroad
Trainmen, J. J. Corcoran and J. E. Teague.

Approved and So Ordered: Aug. 28, 1957.

/s/ OLIVER J. CARTER,
District Judge.

AGREEMENT

This agreement, made at San Francisco, California, this 23rd day of June, 1955, by and between the Southern Pacific Company (Pacific Lines); excluding lines formerly operated by the EP&SW, hereinafter referred to as the Company, and the Brotherhood of Railroad Trainmen, hereinafter referred to as the Organization,

It Is Agreed:

1 (a). Subject to the terms and conditions of this agreement the Company shall deduct sums for periodic dues, initiation fees, assessments and insurance (not including fines and penalties), payable to the Organization by members thereof from wages earned in any of the services or capacities covered in Section (3) First (h) of the Railway Labor Act defining the jurisdictional scope of the First Division, National Railroad Adjustment Board, upon the written and unrevoked authorization of a member in the form agreed upon by the parties hereto, copy of which is attached as Attachment "A" and made a part hereof.

(b). The signed authorization may, in accordance with its terms, be revoked in writing at any time after the expiration of one year from the date of its execution, or upon the termination of this agreement, or upon the termination of the rules and working conditions agreement between the parties, whichever occurs sooner. Revocation of the authorization shall be in the form agreed upon by the par-

ties, copy of which is attached as Attachment "B" and made a part hereof.

(c). Both the authorization forms and the revocation of authorization forms shall be reproduced and furnished as necessary by the Organization without cost to the Company. The Organization shall assume full responsibility for the procurement and execution of the forms by employees and for the delivery of such forms to the Company.

2. Deductions as provided for herein shall be made by the Company in accordance with certified deduction lists furnished to the Division Superintendent by the Treasurer of the Local Lodge of which the employee is a member. Such lists, together with assignment and revocation of assignment forms, shall be furnished to the Division Superintendent on or before the 5th day of each month in which the deduction or termination of deduction is to become effective as hereinafter provided. The original lists furnished shall show the employee's name, employee account number, and the amount to be deducted in the form approved by the Company. Thereafter, two lists shall be furnished each month by the Treasurer of the Local Lodge to the Division Superintendent as follows:

(a). A list showing any changes in the amounts to be deducted from the wages of employees with respect to whom deductions are already being made. Such list shall show both the amounts previously authorized to be deducted and the new amounts to be deducted; also the names of employees from whose wages no further deductions are to be made

which shall be accompanied by revocation of assignment forms signed by each employee so listed. Where no changes are to be made the list shall so state.

(b). A list showing additional employees from whose wages the Company shall make deductions as herein provided, together with an assignment authorization form signed by each employee so listed. Where there are no such additional employees the list shall so state.

3. Deductions as provided for herein will be made monthly by the Company from wages due employees for the first period in each calendar month, and the Company will, subject to the provisions of paragraph 4 hereof, remit to the Organization, the total amount of such deductions, less sums withheld in accordance with paragraph 5, on or before the 15th day of the month following the month in which such deductions are made. With such remittance the Company will furnish to the Treasurer of the Local Lodge a statement showing employees from whom deductions were made and amount of deductions.

4 (a). In the event earnings of an employee are insufficient to permit the full amount of deduction, no deduction will be made and responsibility for collection shall rest entirely with the Organization.

(b). The following payroll deductions shall have priority over deductions covered by this agreement:

Federal, State and Municipal taxes and other deductions required by law, including garnishments and attachments

Amounts due the Company

Group Life and Southern Pacific Hospital Department contributions

Prior valid assignments and deductions.

(c). In cases where no deduction is made from the wages of an employe due to insufficient earnings, or for other reasons, the amounts not deducted shall not be added to deduction lists for the employe for any subsequent payroll period.

5. In consideration of the services herein described, the Organization agrees that the Company shall retain from the sum of all deductions made in each month six (6) cents per employe from whom deduction is made in such month, and remit to the Treasurer of the Local Lodge the balance due the Organization.

6. Responsibility of the Company under this agreement shall be limited to remitting the amounts actually deducted from wages of employes pursuant to this agreement, subject to paragraph 5, and the Company shall not be responsible financially or otherwise for failure to make deductions or for making improper or inaccurate deductions. Any question arising as to the correctness of the amount deducted shall be handled between the employe involved and the Organization.

7. The Organization shall indemnify, defend and save harmless the Company from any and all claims, demands, liability, losses or damage resulting from the entering into or complying with the provisions of this agreement.

8. This agreement shall become effective August 1st, 1955.

Signed at San Francisco, California, this 23rd day of June, 1955.

For: Southern Pacific Company (Pacific Lines):

/s/ K. K. SCHIMP,

Manager of Personnel.

For: The Brotherhood of Railroad Trainmen:

/s/ J. J. CORCORAN,

General Chairman.

/s/ J. E. TEAGUE, JJC,

Secretary, General Committee.

Form Approved: Form of Execution Approved:

/s/ BURTON MASON,

Attorney.

ATTACHMENT "A"

Wage Assignment Authorization

I hereby assign to the Brotherhood of Railroad Trainmen that part of my wages necessary to pay my monthly union dues, fees, assessments, initiation fees, and insurance premiums (not including fines and penalties) as reported to the Southern Pacific Company by the Treasurer of my Local Lodge in monthly statements, certified by him, as provided under the Deduction Agreement entered into by and between the Organization and the Company; and I hereby authorize the Company to deduct from my wages all such sums and to pay them over to the Treasurer of my Local Lodge.

This authorization may be revoked by the undersigned in writing, after the expiration of one (1)

year, or upon the termination date of the aforesaid deduction agreement, or upon the termination of the rules and working conditions agreement, whichever occurs sooner.

Name

(Last) (First) (Middle Initial)

Employe Account No.....

Home Address..... Division.....

(Street and Number)

..... Occupation.....

(City or Town)

....., 19.....

(Date)

(Signature)

(Lodge No.)

ATTACHMENT "B"

Wage Assignment Revocation

Effective....., I hereby revoke the Wage Assignment Authorization now in effect assigning to the Brotherhood of Railroad Trainmen that part of my wages necessary to pay my monthly dues, assessments, initiation fees and insurance premiums, now being withheld pursuant to the Deduction Agreement between the Organization and the Company, and I hereby cancel the authorization now in effect authorizing the Company to deduct such monthly union dues, assessments, initiation fees and insurance premiums from my wages.

Name

(Last) (First) (Middle Initial)

Employee Account No.
 Home Address Division
 (Street and Number)
 Occupation
 19
 (Date) (Signature)
 (Lodge No.)

[Endorsed]: Filed Aug. 28, 1957.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO SUPPLEMENTAL RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, hereby certify the foregoing and accompanying documents, listed below, are the originals filed in this Court in the above-entitled case and constitute the supplemental record on appeal herein, as stipulated by counsel:

Stipulation correcting and Supplementing Record on Appeal with Order.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 29th day of August, 1957.

[Seal] C. W. CALBREATH,
Clerk,

/s/ By MARGARET P. BLAIR,
Deputy Clerk.

[Endorsed]: No. 15644. United States Court of Appeals for the Ninth Circuit. Marion S. Felter, on behalf of himself and others similarly situated, Appellant, vs. Southern Pacific Company, a Corporation, Brotherhood of Railroad Trainmen, a voluntary association; J. J. Corcoran, as General Chairman, General Committee, Brotherhood of Railroad Trainmen; J. E. Teague, as Secretary, General Committee, Brotherhood of Railroad Trainmen, Appellees. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.)

Filed: July 25, 1957.

Docketed: July 27, 1957.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 15,644

MARION S. FELTER, on behalf of himself and
others similarly situated, Appellant,

vs.

SOUTHERN PACIFIC COMPANY et al.,
Appellees.

STATEMENT OF POINTS TO BE RELIED ON

The appellant, Marion S. Felter, on behalf of

himself and others similarly situated, will rely upon the following points on the appeal herein:

- (1) The Dues Deduction Agreement between the Brotherhood of Railroad Trainmen and the Southern Pacific Company is invalid under the Railway Labor Act (45 U.S.C. Section 151 et seq.) to the extent that it unlawfully limits and restricts the appellant's statutory right of revocation of dues assignments.
- (2) The Dues Deduction Agreement between the Brotherhood of Railroad Trainmen and the Southern Pacific Company, as interpreted and applied by the parties thereto, is invalid under the Railway Labor Act in that it unlawfully limits and restricts the appellant's statutory right of revocation of the assignment by requiring appellant (a) to obtain revocation forms from the Brotherhood of Railroad Trainmen (b) that are reproduced and furnished by that organization (c) and that must be returned to that organization for delivery by it to the Southern Pacific Company.
- (3) The Dues Deduction Agreement between the Brotherhood of Railroad Trainmen and the Southern Pacific Company is invalid under the Railway Labor Act to the extent that said agreement, as interpreted and applied by the parties thereto, unlawfully requires or permits the deduction of dues, initiation fees or assessments from appellant's wages and payment of the same to a labor organization other than that in which appellant holds membership.

(4) The Dues Deduction Agreement between the Brotherhood of Railroad Trainmen and the Southern Pacific Company is invalid under the Railway Labor Act to the extent that said agreement, as interpreted and applied by the parties, unlawfully requires or permits the deduction of dues, initiation fees or assessments from appellant's wages after appellant has executed and furnished his employer with a revocation in writing as provided by the Railway Labor Act.

(5) The Dues Deduction Agreement between the Brotherhood of Railroad Trainmen and the Southern Pacific Company is invalid under the Railway Labor Act to the extent that said agreement, as applied and interpreted by the parties thereto, unlawfully (a) interferes with, influences or coerces the appellant and others similarly situated in their choice of representatives, (b) restricts or denies the right of the appellant and others similarly situated to join a labor organization of their choice, and (c) influences or coerces the appellant and others similarly situated in an effort to induce them to join or remain or not to join or remain members of a particular labor organization.

Dated September 3, 1957.

CARROLL DAVIS & BURDICK,

/s/ By ROLAND C. DAVIS,

Attorneys for Appellant.

[Endorsed]: Filed Sept. 5, 1957. Paul P. O'Brien,
Clerk.

[fol. 84]

**IN UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**MINUTE ENTRY OF ARGUMENT AND SUBMISSION—
April 3, 1958 (omitted in printing)**

[fol. 85]

IN UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Before: Healy, Fee and Barnes, Circuit Judges.

**MINUTE ENTRY OF ORDER DIRECTING FILING OF OPINION AND
FILING AND RECORDING OF JUDGMENT—May 12, 1958**

Ordered that the typewritten opinion this day rendered by this Court in above cause be forthwith filed by the Clerk, and that a Judgment be filed and recorded in the minutes of the Court in accordance with the opinion rendered.

[fol. 86]

IN UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 15,644

**MARION S. FELTER, on behalf of himself and others
similarly situated, Appellant,**

v.

**SOUTHERN PACIFIC COMPANY, a corporation; BROTHERHOOD
OF RAILROAD TRAINMEN, a voluntary association; J. J.
CORCORAN, as General Chairman, General Committee,
Brotherhood of Railroad Trainmen; J. E. TEAGUE, as
Secretary, General Committee, Brotherhood of Railroad
Trainmen, Appellees.**

**Appeal from the United States District Court for the
Northern District of California, Southern Division**

OPINION—May 12, 1958

Before: Healy, Fee, and Barnes, Circuit Judges

HEALY, Circuit Judge

The Railway Labor Act, 45 USCA §152, grants the right of collective bargaining, the right of employees freely to join a recognized union, etc. Subsection "Eleventh (b)" of §152, relevant here, provides, among other things, that any carrier and a labor organization shall be permitted "to make agreements providing for the deduction by such carrier or carriers from the wages of its or their employees in a craft or class and payment to the labor organization representing the craft or class of such employees, of any periodic dues, initiation fees, and assessments . . . uniformly required as a condition of acquiring or retaining membership: Provided, That no such agreement shall be [fol. 87] effective with respect to any individual employee until he shall have furnished the employer with a written assignment to the labor organization of such membership dues, initiation fees, and assessments, which shall be revocable in writing after the expiration of one year or upon the termination date of the applicable collective agreement, whichever occurs sooner."

Appellees Southern Pacific Company and the Brotherhood of Railroad Trainmen entered into a dues check off agreement such as is contemplated by the above provision. As part of this agreement it was stipulated that "Both the authorization forms and the revocation of authorization forms shall be reproduced and furnished as necessary by the Organization [union] without cost to the Company. The Organization shall assume full responsibility for the procurement and execution of the forms by employees and for the delivery of such forms to the Company." The agreement contained provisions to the effect that deductions be made by the Company in accordance with lists of employees forwarded by the Union. It was further provided that thereafter two lists be furnished each month by the Union, one showing additional employees and one showing changes in amounts and the names of any employees for whom no further deductions should be made. The list was to "be

accompanied by revocation of assignment forms signed by each employee so listed."

Appellant was employed as a conductor for Southern Pacific. He executed an assignment form provided by appellee Brotherhood, of which union he was then a member, and thereafter his union dues were regularly deducted. After the passage of more than a year he joined another union, the Order of Railway Conductors and Brakemen. [There was no impropriety in his joining this union inasmuch as the Railway Labor Act protects the employee's right to change unions if he desires to do so.] Appellant then obtained, filled out and signed a form to terminate his assignment of wages, this form being printed and furnished by his new union. In all material respects it was identical with the form as printed by his former union. The revocation form was sent to the Railroad Company, and the Company forwarded it to the Brotherhood. Appellee Brotherhood immediately wrote appellant, sending him a form provided by it and requesting that he fill it out and return it so that his assignment could be revoked by the list the [fol. 88] union was then preparing for submission to the Railroad Company under the terms of the agreement.

Appellant never returned the proffered form to the Brotherhood. Accordingly, the Railroad Company did not terminate appellant's dues assignment and has continued to deduct dues for the Brotherhood, his former union.

There appears to be no dispute as regards the facts; and the only issue raised by appellant is whether the agreement, as interpreted by the appellees, to require a revocation to be on a form furnished by the union from which he had withdrawn, is violative of the Railway Labor Act. His argument is that the Act says a wage assignment "shall be revocable in writing" and that by requiring this writing to be on a particular form is a requirement which goes beyond what is permitted by the Act.

The trial judge was of opinion that the Act should be given a workable interpretation; that the requirement of special forms was merely to facilitate orderly procedure and to aid effective bookkeeping; and that this should be allowed if it does not place an unreasonable burden on the

employee's right to change unions.¹ He concluded that it did not, more especially in this case where the appellee union had the forms, was ready and able to furnish them, and in fact did send the correct forms to appellant, who for reasons best known to himself did not see fit to use them.

We are of opinion that the trial court's appraisal of the case is correct, and the judgment is accordingly affirmed.

[File endorsement omitted]

[fol. 89]

IN UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 15644

MARION S. FELTER, etc., Appellant,

v.

SOUTHERN PACIFIC COMPANY, a corporation, et al., Appellées.

Appeal from the United States District Court for the Northern District of California, Southern Division.

JUDGMENT—Filed and Entered May 12, 1958

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Northern District of California, Southern Division, and was duly submitted.

¹ See opinion of the Supreme Court in *Pennsylvania Railroad Co. v. Rychlik*, 352 U. S. 480. The case is not in point here except that it discusses the purposes of the Act. The Court concluded that the Act is intended to facilitate changes in unions, not to aid one union to raid another, but to cope with the problem peculiar to the railroad industry where employees may temporarily shift from craft to craft.

On consideration whereof, it is now here ordered and adjudged by this Court, that the Judgment of the said District Court in this cause be, and hereby is affirmed.

[File endorsement omitted]

[fol. 90]

Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 91]

SUPREME COURT OF THE UNITED STATES

No. 269, October Term, 1958

MARION S. FELTER, on Behalf of Himself and Others
Similarly Situated, Petitioner,

v.

SOUTHERN PACIFIC COMPANY, et al.

ORDER ALLOWING CERTIORARI—October 13, 1958

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.